

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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REX JONES,

Plaintiff,

**ANSWER OF DEFENDANT
CITY OF NEW YORK**

-against-

08 Civ 4618 (JGK)

THE CITY OF NEW YORK, POLICE OFFICER LUIS
ORTIZ (Shield 1133, Tax ID 934038, 43rd precinct) and
JOHN DOES # 1-5,

JURY TRIAL DEMANDED

Defendants.

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Defendant the City of New York (“City”), by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, as and for an answer to plaintiff’s Complaint (“Complaint”), respectfully alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph “1” of the Complaint, except admits that plaintiffs purport to bring this action as stated therein.

2. Denies the allegations set forth in paragraph “2” of the Complaint, except admits that plaintiffs purport to invoke the jurisdiction of this Court as stated therein.

3. Denies the allegations set forth in paragraph “3” of the Complaint, except admits that plaintiffs purport to invoke the jurisdiction of this Court as stated therein.

4. Denies the allegations set forth in paragraph “4” of the Complaint, except admits that plaintiffs purport to lay venue as stated therein.

5. Denies the allegations set forth in paragraph “5” of the Complaint, except admits that plaintiffs purport to invoke the jurisdiction of this Court as stated therein.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “6” of the Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7" of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "8" of the Complaint.

9. Admits that the plaintiff purports to proceed as set forth in paragraph "9" of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "10" of the Complaint.

11. Denies the allegations set forth in paragraph "11" of the Complaint, except admits that the City of New York is a municipal corporation organized under the laws of the State of New York and that it maintains a police department.

12. Admits the allegations contained in paragraph "12" of the Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" of the Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "14" of the Complaint.

15. Paragraph "15" of the Complaint contains legal conclusions to which no response is required.

16. Denies that the arrest of plaintiff was illegal, denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning certain alleged John Doe officers, otherwise admit the allegations contained in paragraph "16" of the Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "17" of the Complaint.

18. Denies the allegations contained in paragraph "18" of the Complaint.
19. Denies the allegations contained in paragraph "19" of the Complaint.
20. Denies the allegations contained in paragraph "20" of the Complaint.
21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "21" of the Complaint.
22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "22" of the Complaint.
23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "23" of the Complaint.
24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "24" of the Complaint.
25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "25" of the Complaint.
26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "26" of the Complaint, except admits that plaintiff has annexed documents to the Complaint.
27. Denies the allegations contained in paragraph "27" of the Complaint.
28. In response to the allegations set forth in paragraph "28" of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.
29. Denies the allegations contained in paragraph "29" of the Complaint.

30. In response to the allegations set forth in paragraph "30" of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

31. Denies the allegations contained in paragraph "31" of the Complaint.
32. Denies the allegations contained in paragraph "32" of the Complaint.
33. Denies the allegations contained in paragraph "33" of the Complaint.
34. In response to the allegations set forth in paragraph "34" of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.
35. Denies the allegations contained in paragraph "35" of the Complaint.
36. Denies the allegations contained in paragraph "36" of the Complaint.
37. In response to the allegations set forth in paragraph "37" of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.
38. Paragraph "38" of the Complaint contains legal conclusions to which no response is required.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

41. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

42. Defendant City has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political

subdivision thereof, nor has the defendant violated any act of Congress for providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

43. At all times relevant to the acts alleged in the Complaint, the duties and functions of the municipal defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City of New York is entitled to governmental immunity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

44. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of the defendant.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

45. There was probable cause for plaintiff's arrests and/or detentions.

AS AND FOR AN SIXTH AFFIRMATIVE DEFENSE:

46. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

48. Plaintiff has failed to comply with all conditions precedent to suit.

WHEREFORE, defendant City requests judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
 July 11, 2008

MICHAEL A. CARDOZO
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City of New York
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By: /s/
 Michael K. Gertzer

TO: Joel Berger, Esq. (by ECF)